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Chairman H.S. Buddy Garcia
Commissioner Larry R. Soward
Commissioner Bryan W. Shaw, Ph.D.

MARKED AGENDA

OLD BUSINESS AGENDA

Friday, May 9, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Building E

This meeting is a work session for discussion between Commissioners and staff. Public comment will be accepted at the discretion of the Commissioners. The Commissioners may take action on items posted for consideration. The Commissioners will not take action on items posted for discussion only. The Commissioners may discuss or consider posted items in an order other than the order posted. The Commissioners may recess for a lunch break and not meet in Open Session from 12:00 pm to 1:00 pm. Unfinished items will be continued to the afternoon.

Item continued from the January 16, 2008 agenda.

Item OBI, Docket No. 2006-0383-RUL. Consideration for publication of, and hearing on, proposed amendments to 30 TAC Chapter 60, Compliance History, Sections 60.1-60.3. The proposed rulemaking would make changes to the components and the formula; redefine repeat violator; change the average by default classification; add a requirement that prior to a sale of a regulated entity, the current owner shall provide compliance history information to the prospective buyer, and the buyer shall also seek out compliance history information; add language that allows a regulated entity access to its compliance history information prior to publication on the agency's Web site; and revise the appeal of classification language to allow all average performers the opportunity to appeal. (Mary Wallin, Robert Mosley) (Rule Project No. 2006-001-060-CE)

Item continued to the August 29, 2008 Commissioners' Work Session.

Registrants: Joe Polanco representing Dallas SBAC, Printing and Imaging Association.
John Howard representing the Texas Association of Business, Texas Chemical Council and Texas Oil and Gas Association.
Carol Batterton representing the Water Environment Association of Texas.

NEW BUSINESS AGENDA

Friday, May 9, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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12100 Park 35 Circle
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This meeting is a work session for discussion between Commissioners and staff. Public comment will be accepted at the discretion of the Commissioners. The Commissioners may take action on items posted for consideration. The Commissioners will not take action on items posted for discussion only. The Commissioners may discuss or consider posted items in an order other than the order posted. The Commissioners may recess for a lunch break and not meet in Open Session from 12:00 pm to 1:00 pm. Unfinished items will be continued to the afternoon.

Item 1. Discussion of the Monthly Enforcement Report.

Item presented by Daphne McMurrer, Special Assistant to the Director of the Enforcement Division, and John Racanelli, Manager of the Revenue Section in the Financial Administration Division.

No action taken.

Item 2. Consideration of changes to the September 2002 Penalty Policy. The Commission may consider how to determine the base penalty amount; standard penalties; penalty adjustment factors including culpability, good faith, compliance history, economic benefit, and other factors as justice may require; deferrals; financial inability to pay and payment schedules; supplemental environmental projects; joint and several liability; or the criteria for use of a Findings Order. The Commission will also consider which of the penalty processes will be implemented through rulemaking, policy, guidance document, operating procedures or other forms. (Matthew Baker)

Item presented by John Sadlier, Deputy Director, Officer of Compliance and Enforcement; Matthew Baker, Director, Enforcement Division; and Stephanie Bergeron Perdue, Deputy Director, Office of Legal Services. The Commissioners discussed and provided guidance on twelve administrative penalty policy questions.

Question 1. Under what circumstances should the Executive Director recommend a penalty that takes into account pollutant speciation? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 2. If a respondent is deemed culpable for a violation, should they be eligible for a "demonstrated good faith" penalty adjustment? The Commissioners agreed on option 1: The Executive

Director recommends allowing a good faith adjustment on violations where the respondent has been deemed culpable.

Question 3. Should the Executive Director recommend a demonstrated good faith adjustment for partial compliance with a single violation? If so, under what conditions? The Commissioners agreed on a modified option 1: Allow a demonstrated good faith adjustment for partial compliance.

Question 4. Should the Executive Director recommend compliance history adjustments based on individual components of a respondent's compliance history? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 5. Should the Executive Director recommend a penalty that recovers economic benefit from political subdivisions and nonprofit organizations? If so, at what size? The Commissioners agreed on option 3: Do not recover economic benefit from political subdivisions and nonprofit organizations.

Question 6. Should the Executive Director allow on-going businesses to receive a financial review based on a claim of inability to pay? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 7. Should the Executive Director conduct an updated financial review for respondents who pass inability to pay criteria prior to Agenda when the case experienced a prolonged delay beyond the control of the respondent? The Commissioners agreed on a blend of the three available options: An updated financial review will be conducted when requested by the Commission. When such a request is made, the case may be remanded to allow staff time for the updated review. For cases that have settled, the Commission anticipates making such requests in circumstances when the original financial review is more than a year old before Commission consideration.

Question 8. Should the Executive Director allow respondents with legal representation to obtain financial review for an inability to pay deferral? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 9. What, if any, limits would the Commission like to see on payment plans? The Commissioners agreed on a modified option 1: For operating businesses, continue minimum payment of \$100 with maximum payment plan of 36-months unless, in the ED's discretion, the circumstances warrant a longer payment plan.

Question 10. Which aspects of the penalty policy would the Commission like to see in rule? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 11. When should the Commission undertake rulemaking? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Question 12. Under what circumstances should the Executive Director recommend revocation of a license or authorization? The Commissioners agreed to continue this question to the August 29, 2008 Commissioners' Work Session.

Registrant: John Howard representing the Texas Association of Business, Texas Chemical Council and Texas Oil and Gas Association.

Item 3. PUBLIC COMMENT SESSION: The Commission will receive comments from the public on any matters within the jurisdiction of the TCEQ, with the exception of pending permitting matters or other contested cases which are subject to the ex parte prohibition found in Texas Government Code §2001.061. In the interest of time, speakers will be limited to three minutes each, with the total time for public comment limited to one hour.

There were no registrants for this item.

Item 4. Closed Session.

a. Docket No. 2008-0001-EXE. The Commission will conduct a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director and General Counsel, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners did not meet in closed session.

b. Docket No. 2008-0002-EXE. The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074 of the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on legal or personnel matters considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners did not meet in closed session.

c. Docket No. 2008-0003-EXE. The Commission will conduct a closed meeting to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074 of the Open Meetings Act, Codified as Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners did not meet in closed session.

PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ COMMISSIONERS' WORK SESSION AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

REGISTRATION FOR AGENDA STARTS AT 9:00 A.M. UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.

THE PUBLIC CAN VIEW LIVE AND ARCHIVED TCEQ MEETINGS ON THE INTERNET AT NO COST, AT: <http://www.texasadmin.com/cgi-bin/tnrcc.cgi>

